IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO:I.T.A. No.84 of 2005

DATE OF DECISION:December 11, 2006

THE COMMISSIONER OF INCOME TAX, PANCHKULA.

.....APPELLANT
through Mr. Yogesh Putney,
Advocate

VERSUS

M/S JAI LAXMI RICE MILLS, AMBALA CITY.

.....RESPONDENT
through Mr. Rakesh Garg,
Advocate

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUTICE
HON'BLE MR. JUSTICE J.S.NARANG.

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment?**

2. **To be referred to the Reporters or not?**

3. **Whether the judgment should be reported in the Digest?**

VIJENDER JAIN, CHIEF JUSTICE (ORAL)

Aggrieved by the order passed by the Income Tax Appellate Tribunal (for short " the ITAT"), Revenue has preferred this appeal in this Court. The only point which has been raised before us by the appellant is that the penalty amount under Section 271-D of the Income Tax Act (for short "the Act") were a separate proceedings and were not covered by the order passed by Commissioner of Income Tax (Appeals) on 05.12.1996. It is also contended by learned counsel for the revenue that the order under Section 271-D of the Act was passed on 23.09.1996, whereas the order

was passed by the CIT(Appeals) was on 05.12.1996. On the basis of the aforesaid, it was contended before us that the I.T.A.T. has erred in law in deleting the penalty under Section 271-D holding that the penalty proceedings were initiated by the Assessing Officer during the original assessment and the subsequent proceedings cannot survive once the original assessment proceedings have been set aside by the learned C.I.T. (Appeals).

We have heard the learned counsel for the parties and have gone through the entire records. The order passed by the CIT (Appeal) dated 05.12.1996, is to the following effect:-

" **Appeal Nos.:-188 & 189/95-96**

Both these appeal Instituted on 24.9.96 from the orders of

Income tax Officer, Ward-3, Ambala (R.L.Mahajan)

1.	Year of asstt(s)		1991-92 & 1992-93
2.	Name of the appellant		M/s Jai Lakshmi Rice Mills, Hissar Road, Vill Nasirpur, Ambala City.
3.	Income assessed.	1991-92 1992-93	Rs.42,04,959/- Rs.18,34,584/-
4.	Tax demanded	1991-92 1992-93	Rs.10,11,706/- Rs.27,60,875/-
5.	Section under which the order appealed against was passed		U/s. 144
6.	Date of hearing		26.11.1996
7.	Present for the appellant		None
8.	Present for the Deptt.		Sh. R.L.Mahajan,ITO

Order U/s. 250(6) of the I.T.Act:-

Both these appeals for asstt. Years 1991-92 and 1992-93 eminate from orders passed by ITO, Ambala. On the date fixed for hearing i.e. 26.11.1996 at Chandigarh, Shri

R.L.Mahajan, Assessing Officer was present along with the assessment records. Nobody attended on behalf of the assessee.

2. I have carefully examined the facts on record and the assessment records were perused. Keeping in view the principles of natural justice and the fact that the assessment was completed u/s. 144 and the fact that ample opportunity was not afforded to the appellant, the assessment orders for both the assessment years in appeal are set-aside with the direction that the assessments may be framed denovo after affording adequate opportunity to the appellant.

In the result, both Asstt. Orders, are set-aside."

From a careful consideration of the aforesaid order, the CIT (Appeals) held that assessment orders for both the assessment years in appeal are set-aside with the direction that the assessments may be framed denovo, after affording adequate opportunity to the appellant. Once the assessment orders for both the years were set-aside, that included the order passed by the revenue under Section 271-D of the Act, would not survive. Therefore, to say that the order, which has been passed by the revenue were independent proceeding under Section 271-D, is not correct. The order which has been passed by the department under Section 271-D of the Act would practically submerge, in view of the order passed by the CIT (Appeals), vide which the original assessment order was set-aside and the case was remanded for denovo assessment.

Learned counsel for the respondent contended that after the direction of the CIT(Appeals), fresh assessment orders in relation to the

two assessment years have also been passed. No reference in those orders have been made to the order passed by the revenue under Section 271-D of the Act.

We are of the view that no substantial questions of law arise for our consideration in this appeal. Thus, the appeal is hereby dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

December 11, 2006 **(J.S.NARANG)**
nt **JUDGE**